

PLANNING COMMISSION MINUTES

February 7, 2012

7:00 p.m.

Present: Chairman Tom Smith, Vice-Chairman Dave Badham, Sean Monson, Michael Allen, Von Hill, City Council Representative Beth Holbrook, City Attorney Russell Mahan, City Engineer Paul Rowland, Planning Director Aric Jensen and Recording Secretary Connie Feil.

Absent: David Patton.

Chairman Tom Smith welcomed all those present.

Dave Badham made a motion to approve the minutes for January 17, 2012 as written. Beth Holbrook seconded the motion and voting was unanimous in favor.

1. Consider final subdivision plat approval for Kensington Court Subdivision located at 640 E. 400 N., Brighton Homes, applicant.

Jim Boyden, representing Brighton Homes, and Brad Llewelyn, representing Focus Engineering, were present. Paul Rowland explained that the developers of Kensington Court Subdivision have completed drafting the final subdivision plat and construction drawings and are now requesting final approval. This subdivision was granted preliminary approval on January 10, 2012 by the City Council with several conditions. Review of the final plat and construction drawings are near completion, with most of the redlines already completed.

This subdivision consists of 12 lots on the former Chet Simmons property at 650 East and 400 North, all of which meet the requirements of the R-4 zone in which they are located. Utilities are provided by connecting to the existing systems in the surrounding streets without significant impact to the existing facilities. Storm drainage will be directed to Stone Creek near where it crosses under 400 North, and the developer will be required to pay the storm water impact fee of \$2100/acre because there is no detention. The subdivision completes 350 North Street and provides a long needed way for City equipment and emergency vehicles to circulate through the area.

Mr. Rowland recommended sending to the City Council final approval of the Kensington Court Subdivision with the following conditions:

1. Make all required red line corrections.
2. Post a Letter of Credit to cover the cost of the public improvements per the bond letter.
3. Pay all required fees.
4. Sign a Development Agreement with the City.
5. Submit a current title report.

There was a discussion regarding storm drainage, releasing easements and recording the boundary lines with the title company. It was suggested to add an additional condition to receive approval from the Davis County Flood Control for the storm drainage.

Michael Allen made a motion to recommend to the City Council final approval of the Kensington Court Subdivision subject to the conditions outlined by Staff with the addition of the following:

6. Receive written flood channel/storm drain approval from Davis County Flood Control.

Sean Monson seconded the motion and voting was unanimous in favor.

2. Consider amended site plan of a non-conforming use for K & J Auto located at 310 S. Main, Kenny Knighton, applicant.

Mike Deamer Attorney, representing Kenny Knighton, was present. Kenny & Shirley Knighton, applicants, were also present. Aric Jensen explained that Mr. Knighton is requesting an amended site plan approval for a nonconforming vehicle sales use located at 310 South Main and for an adjacent property located at 45 West 300 South. Both of these properties are located in the Downtown (DN) Zone.

Mr. Knighton and his business, K & J Auto, are currently being prosecuted by Bountiful City for various land use ordinance violations, some of which are germane to the amended site plan request. The existing K & J Auto Property has been a vehicle service station and/or a vehicle sales lot for at least the past 30 years. The property to the west of the K & J Auto property is a single parcel of land, formerly owned by the owners of Duncan Lighting, the property immediately across 300 South Street to the north. This property contains an existing building and parking lot, which were originally constructed and utilized by a chapter of the American Legion. This property has never been used for vehicle sales.

Mr. Knighton would like to amend his existing site plan to include the American Legion Property, which he acquired in March, 2011. Mr. Knighton would also like the Planning Commission to approve the use of existing temporary tent structures that he has erected without building permits over the past several years.

Mr. Jensen explained that the proposed amended site plan cannot be approved on the general grounds that it would expand a nonconforming use when such an action is expressly prohibited by the City Land Use Ordinance, and because the elements of the site plan drawing itself do not meet the minimum requirements of the Land Use Ordinance. The applicant has the option of petitioning the City Council to amend the Land Use Ordinance. At this time the applicant has not taken such action.

Russell Mahan explained that the use of a car sales lot, which is a non-conforming use, is legal for the existing K & J Auto. However, to expand that use to the abutting property is prohibited for zoning purposes. The use of the tents on the property are also illegal and the landscaping

does not conform to the Ordinance. Mr. Mahan referred to Section 14-2-404 of the Land Use Ordinance.

A letter was presented to all those present from Michael Barfuss, Deputy Fire Marshal, stating that he and the former Fire Marshal Steve Cox visited with Mr. Knighton on different occasions to explain the issues and problems with the tent structures. A memorandum was also presented with a list of all citations from past and present editions of the Uniform Building Code, the International Building Code, citations to the use or occupancy of a structure, citations related to fire resistance, setbacks, and other criteria of the UBC and/or IBC. Attached to the minutes are various addenda, including Mr. Knighton's application, a letter from the Fire Marshall, an affidavit from Lee Duncan, a memo from the Planning Director, the Planning and Engineering Staff Report, copies of State and City codes, and several illustrations.

Mr. Jensen stated that Staff recommends denial of the amended non-conforming use site plan for the K&J Auto Property on the grounds that the Bountiful City Land Use Ordinance prohibits the expansion of nonconforming uses and sites, and because the site plan itself does not meet the minimum requirements of the Land Use Ordinance.

Mike Deamer explained that after the City filed criminal charges against K & J Auto, he has met with the City Prosecutor and Mr. Jensen attempting to find a solution to drop the charges and to become compliant with the Ordinance. Mr. Jensen suggested filing an amended site plan, which Mr. Knighton has done.

Mr. Deamer expressed the concerns and legality of the following items with his presentation.

- The tents are not permanent structures.
- Property was bought from Lee Duncan as an individual property for an investment.
- Statement was given from Lee Duncan stating that the use of the rear property has been used for his vehicle storage.
- The American Legion property has always been used for parking.
- Landscaping requirement is a non-conforming element and requiring the property to be brought into compliance is a modification of the non-conforming use.
- The property owners do not want to put in any landscaping.
- The owners feel that the City no longer wants their business in Bountiful.

After Mr. Deamer's presentation there was a lengthy discussion among the Staff, Mr. Deamer and Mr. Knighton regarding all the above items. The Planning Commission stated that Mr. Knighton is entitled to continue his nonconforming use as it legally existed at the time it became nonconforming; however, he also needs to follow the Fire, Building, and Land Use Codes just like everybody else.

Michael Allen made a motion to recommend to the City Council denial of the amended non-conforming site plan for K & J Auto property based on Staff's report. Beth Holbrook seconded the motion and voting was unanimous in favor.

Mr. Mahan stated that the denial made tonight is not the final decision; it is only a recommendation to the City Council. Mr. Jensen stated that this recommendation will go before the City Council in 7 days unless Mr. Deamer asks for an extension. Mr. Deamer asked if he was required to submit a written document to the City Council to appeal the decision. Mr. Jensen said that it was not necessary and the item would be automatically put on the agenda for City Council. Mr. Deamer said he wanted to submit a written document to the Council stating that they tried to solve the situation administratively.

3. PUBLIC HEARING - Discuss revisions to Title 14, Bountiful City Land Ordinance.

Mr. Jensen explained that due to the length of the previous items, he would not make a presentation at this time. Mr. Jensen asked if anyone had any comments. The public hearing will continue on February 21, 2012.

4. Planning Director's report and miscellaneous business.

Mr. Jensen had no further business to discuss.

Meeting adjourned at 8:20 p.m.